

PROMOTING ALCOHOLIC BEVERAGES IN MICHIGAN

Michigan Liquor Control Commission Manufacturers & Wholesalers Section

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www.michigan.gov/cis (Click on "Liquor Control")

Introduction:

The importation, distribution, sale and **promotion** of alcoholic liquor (beer, wine, spirits and mixed spirit drinks) are highly regulated in Michigan. As the primary regulatory agency overseeing the alcoholic liquor industry, the Michigan Liquor Control Commission ("Commission") is responsible for overseeing all facets of the beverage alcohol industry through the Liquor Control Code and Administrative Rules, including the promotion of alcoholic beverages by suppliers, wholesalers and retailers. The Liquor Control Code sets in place a three-tier distribution system requiring alcoholic beverage suppliers, wholesalers and retailers be licensed by the Michigan Liquor Control Commission and requires a distinct separation between these distribution tiers. In support of this three-tier distribution system, the Legislature, through the Liquor Control Code, and the Commission, through Administrative Rules, have enacted a number of statutes and rules ensuring that each of the distribution tiers operates independently without undue influence from other industry members providing for a stable alcoholic beverage distribution system operating on a level playing field. While the Commission appreciates the necessity of the industry being able to promote beverage alcohol in a responsible manner, they are also keenly aware of the need to maintain the integrity of the three-tier system. This balance of allowing alcoholic beverage promotion, which involves a certain amount of interaction between the distribution tiers, while sustaining the independence of the distribution tiers, is accomplished by closely regulating the relationship and interaction of industry members in the sale and promotion of beverage alcohol.

While by no means all inclusive, the following information will assist you in understanding the legality of alcoholic beverage promotions in Michigan, including a better understanding of trade practice interaction between alcoholic beverage suppliers, wholesalers and retailers. A complete set of the Liquor Control Code and Administrative Rules is available from the MLCC by sending \$5.00 check, payable to the "State of Michigan" to MLCC, P.O. Box 30005, Lansing, MI 48909, or from the MLCC Website at: <http://www.michigan.gov/cis> (click on "Liquor Control")

As used in this document:

- "Retail licensee" means any person licensed to sell alcoholic liquor products to consumers for either off-premises consumption (take-out) or for on-premises consumption.
- "Alcoholic liquor" means beer, wine, spirits or mixed spirit drinks. A beverage must contain ½ of 1% or more alcohol by volume to be defined as alcoholic liquor.
- "Commission" means Michigan Liquor Control Commission.
- "Code" means Liquor Control Code.
- "MCL" means Michigan Compiled Law (Liquor Control Code).
- "Rule" means Administrative Rule.

Aid and Assistance:

Section 609 of the Code, being MCL 436.1609, and Rule 436.1035 prohibit an alcoholic beverage supplier or wholesaler from aiding or assisting any other licensee by giving them anything of value. Further a licensee is prohibited from accepting aid and assistance from another industry member. Basically, alcoholic beverage suppliers are prohibited from giving anything of value to their wholesalers or retailers. Likewise, alcoholic beverage wholesalers are prohibited from giving anything of value to their retailers. This principle is the cornerstone of Michigan's trade practices regulatory structure. It is designed to provide a level playing field for all industry members. Suppliers and wholesalers are prohibited from giving anything of value to retail licensees, including but not limited to: alcoholic beverages, merchandise, furniture, fixtures, equipment, uniforms, cash or loans, labor, etc. While wholesalers and suppliers may provide point-of-sale materials such as posters, banners, table tents, flyers, etc., to retailers promoting their brands and prices, they are prohibited from providing anything that has any secondary use, value or purpose, other than actual advertising value to retailers without prior Commission approval. This same principle prohibits suppliers and wholesalers from providing free advertising, incentive programs, free or discounted product, draft system installation and maintenance, etc. Violations in the aid and assistance statute will result in all participants (retailer, wholesaler and supplier) being cited before the Commission. Many of the specific prohibitions described in the remainder of this document can be traced back to this aid and assistance prohibition.

? MCL 436.1609, Rule 436.1035

Point-Of-Sale Material For Product & Price Advertising Only:

Wholesalers and suppliers may provide point-of-sale material such as, posters, table tents, shelf talkers, banners, cooler stickers, wall plaques, mirrors, etc., to retail licensees. Such items are limited to advertising brand and price only, and only for the products of the supplier or wholesaler who provided the point-of-sale material. Suppliers or wholesalers may provide these items to retailers but such items may **not** be used to promote other items or events on behalf of the retail licensee. Food specials, happy hours, upcoming entertainment, hours of operation, winning lottery numbers, etc., may not be advertised on any point-of-sale material. Retailers are also prohibited from customizing point-of-sale material provided by alcoholic beverage wholesalers or suppliers by adding their name or any additional advertising benefiting the retailer. **Point-of-sale material may not include the name or logo of any retail licensee.** Point-of-sale material advertising something other than alcoholic beverage products and prices need prior Commission approval. Point-of-sale material used inside an on-premises retailer's premises may be used to promote a wholesaler or supplier's upcoming promotion night in accordance with the Commission's on-premises promotion order.

? Rule 436.1321 (3), Rule 436.1315 (a), Rule 436.1319 (3), Rule 436.1035, MCL 436.1609

Illuminated Signs:

On January 8, 2004, Attorney General Mike Cox issued Opinion #7146, which ruled that Commission Rule 436.1313(1) was a violation of the First Amendment of the U.S. Constitution. Retailer licensees may now display illuminated signs inside or outside of their establishments. The Commission has not yet ruled whether licensed alcoholic beverage wholesalers or suppliers can provide illuminated signs free of charge or whether they can sell illuminated signs to retailers. We are advising wholesalers and suppliers not to provide illuminated signage to retailers in any manner, except that suppliers may provide signs to Sports/Entertainment venues, as defined by Rule 436.1001(r), pursuant to Rule 436.1313(3,4).

? Rule 436.1313 (1)

Size Limitation On Signs Inside Retail Licensed Premises:

Alcoholic beverage advertising signs located inside retail licensed premises are limited to 3,500 square inches in dimension. Anything attached to or a necessary part of the sign shall be considered in determining signage size. The MLCC liberally interprets “sign” to include any item that advertises alcoholic beverages, such as; race cars, snowmobiles, arcade games, wall murals, inflatables, etc.

Exceptions to 3,500 Square Inch Advertising Limitation:

- The arena areas, concourse areas and private suite areas of “Sports/ Entertainment Venues”, as defined by Rule 436.1001(r), are excluded from the 3,500 square inch limitation rule.
- Outdoor patio areas are also excluded from the size limitation.
- Temporary display bins are exempted from the 3,500 square inch size limitation.

? Rule 436.1313 (1,2,3), Rule 436.1329 (5)

Outdoor Banners:

Outdoor advertising banners or billboards provided by alcoholic beverage suppliers or wholesalers may only be used to advertise the brand and price of the providing suppliers/wholesaler’s products only. No retail name or logo may be displayed on any banner provided by an alcoholic beverage wholesaler or supplier. There are no size restrictions on banners used outside a retailer’s licensed premises. Generic banners such as, Welcome Hunters, Welcome Golfers, Welcome Bowlers, Draft Beer, Go Red Wings, etc. that are not retailer specific are allowed. Outdoor banners may not have a secondary purpose to the retail licensee. Banners may not be used to advertise; happy hours, “live entertainment tonight”, “fish fry Fridays”, “free shuttle service”, hours of operation, on-premises promotions, etc. Brand logoed banners may not be sold to retail licensees for them to imprint their own messages on.

? Rule 436.1321 (3), Rule 436.1315 (a), Rule 436.1319 (3), Rule 436.1035, MCL 436.1609

Table Tents/Inserts:

As noted in “point-of-sale” section above, wholesalers and suppliers are allowed to provide brand logoed table tents to retail licensees. The table tents are only for the promotion of the products and prices of the wholesaler or supplier providing the table tent. Acrylic table tent holders are also allowed in Michigan. Inserts used in acrylic table tents must be limited to promoting only the products and prices of the wholesaler or supplier providing the acrylic table tent. Inserts may **not** contain the name of a retail licensee. Neither table tents nor inserts may be used to advertise other things on behalf of the retailer, such as: appetizers or other food items, happy hours, upcoming entertainment, etc.

? Rule 436.1321 (3), Rule 436.1315 (a), Rule 436.1319 (3), Rule 436.1035, MCL 436.1609

Drink Menus:

Drink menus provided by suppliers or wholesalers may only advertise those products distributed by the wholesaler or supplier providing the drink menu. Only the providing wholesaler or supplier’s products may be advertised on such drink menus. Wholesalers and suppliers may not provide drink menus containing the name of the retail licensee.

? Rule 436.1321 (3), Rule 436.1315 (a), Rule 436.1319 (3), Rule 436.1035, MCL 436.1609

Retailer Name and/or Logo on Advertising:

Wholesalers and suppliers are prohibited from including the name or logo of any retail licensee in their advertising. This prohibition includes: point-of-sale material, newspaper, radio or television advertisements. Retailers are allowed to use their names and logos on their own advertising.

? Rule 436.1315 (a), Rule 436.1319 (3), Rule 436.1035, MCL 436.1609

Payment for Advertising Prohibited:

Alcoholic beverage wholesalers and suppliers are prohibited from paying or compensating a retail licensee in any manner for advertising. This prohibition includes direct payment to the retailer or indirect payment through a third party.

? Rule 436.1315 (b)

On-Premises Licensing Using Brand Logoed Merchandise:

As noted earlier, Section 609 of the Code and Rule 436.1035 prohibit a wholesaler or supplier from giving aid and assistance to any retail licensee. This aid and assistance prohibition is what forbids an alcoholic beverage wholesaler or supplier from supplying a retailer with items such as: coasters, ashtrays, glassware, napkins, clocks, patio umbrellas, message/chalk boards, etc. Rule 436.1321 (8) requires an on-premises retailer to get MLCC approval to utilize brand logoed novelty items in their establishments. **The MLCC will not grant on-premises retailers permission to utilize alcoholic liquor brand logoed merchandise in their establishments.** Therefore, even if the retail licensee purchases brand logoed ashtrays, glassware, clocks, etc., from a third party, they may not use them in their establishments.

Note: Brand logoed bar mats, napkin holders (not napkins), mirrors, point-of-sale material, menu tabs and non-illuminated bottle display pieces are not considered to have any secondary value use or purpose other than advertising and therefore may be provided to retailers for use in their establishments.

? Rule 436.1321 (3,7,8), Rule 436.1315 (a), Rule 436.1319 (3), Rule 436.1035, MCL 436.1609

Brand Logoed Items Used For Display Purposes Only:

On November 18, 1999, the Liquor Control Commission issued two orders relative to the use of brand logoed merchandise valued at no more than \$100.00, **for display purposes only**, at both on-premises and off-premises retail licensed establishments. These brand logoed items may only be provided by manufacturers, outstate sellers, vendors of spirits and brokers, not wholesalers. Wholesalers may deliver and install displays using brand logoed merchandise but may not own and provide such merchandise. These items must remain the property of the supplier. Neither wholesalers nor retailers may own any of these items. Upon completion of the display, these items must be removed from the retailer's premises and returned to the supplier. **Under no circumstances may these items be given to the retail licensee or their employees to take home. These items may be used for advertising purposes only and may not have any use to the retail licensee other than advertising.** Therefore, items such as; clocks, ashtrays, patio umbrellas, message boards, coasters, napkins, glassware, pool stick holders, etc., may not be provided to retail licensees for their use.

? Commission Order dated November 18, 1999

Cooperative Advertising:

Rule 436.1319 prohibits cooperative advertising between alcoholic beverage suppliers, wholesalers and retailers. Cooperative advertising is defined as a joint effort between licensees or vendors of spirits to advertise alcoholic liquor. This rule prohibits suppliers and wholesalers from placing ads on behalf of retailers and also prohibits any sharing of advertising costs between suppliers, wholesalers and retailers.

? Rule 436.1319, Rule 436.1001 (1c)

Glassware:

Generally speaking, alcoholic beverage brand logoed glassware is not allowed for use by on-premises licensees, regardless of how or where the glassware is obtained. On-premises retailers may use glassware with their own name and logo but may not use glassware containing an alcoholic liquor brand name. Exceptions to this glassware prohibition include Micro Brewers, Brewers, Brewpubs, Wine Makers and Small Wine Makers who can use brand logoed glassware in their licensed premises which advertise brands which they manufacture; Special Licensee (24 hour license issued to non-profit organizations) who have purchased the cups or glassware at no less than cost; spirit keep the glass promotions conducted in accordance with the Commission's on-premises promotion order.

? Rule 436.1321 (8)

Wholesale & Supplier On-Premises Promotions:

The MLCC allows alcoholic beverage suppliers and wholesalers to sponsor brand promotions at on-premises establishments. The sponsoring wholesaler or supplier is responsible for notifying the MLCC at least five working days before the event. Wholesalers/suppliers are limited to three (3) on-premises events per retailer in a calendar month. During the approved on-premises event, wholesaler/supplier may provide brand logoed wearing apparel to bar/wait staff of the host retailer. All logoed wear apparel must be removed upon completion of the event. Wait/bar staffs cannot wear the provided brand logoed apparel at any other time while on duty for the retailer. A limited amount of brand logoed merchandise (coasters, placemats, napkins, stir rods, buckets & tubs) may be used during these sanctioned on-premises promotions. All such specially approved material must be removed upon completion of the business day that the promotion is occurring. Wholesalers/suppliers may award up to \$100.00 of merchandise to consumers during these on-premises events. Merchandise must be given to the consumer by a licensed Salesperson to the consumer, not by the retailer. Spirit (liquor) on-premises promotions, not beer & wine, may offer a "keep-the-glass" promotion whereby specialty drinks may be sold to consumers in spirit brand logoed glasses and consumers may be allowed to keep the glassware. A maximum of two (2) glasses may be sold to an individual consumer during a "keep-the-glass" promotion. All glassware must be removed upon completion of the business day of the event. Please note that the "keep-the-glass" promotion is only allowed for spirits, not for beer and wine. Under no circumstances may beer & wine brand logoed glassware be utilized during an on-premises promotion. Table tents, posters and other point-of-sale material displayed inside the host retail establishment may promote an upcoming on-premises event. Under no circumstances may any advertising be done off the licensed premises promoting a wholesaler/supplier on-premises event via flyers, banners, and radio announcements, Internet or by any other means by any party.

? Commission Order dated October 27, 1999

Incentive Programs:

MCL 436.1609 of the Code, which prohibits aid and assistance between licensees, would also prohibit suppliers and/or wholesalers from conducting incentive programs with retail licensees. Wholesalers and/or suppliers are therefore prohibited from providing any prizes, awards, or any other thing of value to retail licensees or their employees. Also, Rule 436.1435 and R436.1019 prohibit any contest involving the sale, use or consumption of alcoholic liquor. This rule would prohibit a retail licensee from conducting their own incentive program with their employees offering prizes or awards based on the sale of alcoholic beverages.

? MCL 436.1609, Rule 436.1435, Rule 436.1035, Rule 1019

Salesperson Employed by Retail Licensee:

Commission rules expressly prohibit a licensed Salesperson or Vendor Representative from being employed by a retail licensee on a paid or any other basis. Commission Rule 436.1317 does allow a licensed Salesperson or Vendor Representative to price their products, rotate their brands, build displays of their brands or place their brands on retailer's shelves. These activities are limited to off-premises retail licensees only and only for the brands represented by the Salesperson.

? Rule 436.1859 (1)(d)

Salespersons Stocking Shelves, Rotating Brands & Pricing Products:

A Salesperson or Vendor Representative representing a licensed alcoholic beverage supplier or wholesaler may do any of the following at an off-premises licensed establishment:

- Build a display of the brands represented by the Salesperson or Vendor Representative.
- Mark the price of the brands represented by the Salesperson or Vendor Representative.
- Rotate the brands represented by the Salesperson or Vendor Representative.
- Place the brands represented by the Salesperson or Vendor Representative on the shelves.

A Salesperson or Vendor Representative is expressly prohibited from removing, rearranging, or otherwise disturbing any brand of alcoholic liquor not represented by the Salesperson or Vendor Representative. Also, a Salesperson or Vendor Representative is prohibited from cleaning shelves, floor, etc., while conducting the aforementioned approved activities.

? Rule 436.1317

Contests & Giveaways:

Alcoholic beverage suppliers and wholesalers may conduct sweepstake or contest promotions, provided that prior Commission approval is obtained. Sweepstakes that involve product purchase, such as game pieces included inside a package, must have an alternative method of entry available that does not require product purchase. A licensee may not participate in or sponsor any contest that requires the use or consumption of alcoholic liquor. **Alcoholic liquor may not be offered as a prize in any contest or sweepstakes.** An alcoholic beverage supplier or wholesaler may not use the name of any retail licensee in promoting any sweepstakes or contest nor may they identify any specific retail licensee as a place to obtain entry forms.

? Rule 436.1019, Rule 436.1321(1,3), Rule 436.1435

Sponsorship of Festivals, Tournaments, and Other Events:

Any sponsorship of a festival, charitable fundraiser, tournament or other event that will involve advertising alcoholic liquor requires prior Commission approval. The Commission will not approve any sponsorship that involves payment to a retail licensee, including Special 24 Hour Licensees. The Commission will not approve any promotion that directly benefits a retail licensee.

? Rule 436.1321 (3)

Installation/Maintenance of Draft Systems & Coil Cleaning Service:

Alcoholic beverage suppliers and wholesalers are prohibited from installing or maintaining draft dispensing equipment in a retail establishment. Suppliers and wholesalers are also prohibited from providing coil-cleaning services to any retail licensee.

? MCL 436.1609, Rule 436.1035

Providing Dispensing Equipment, Furniture, or Fixtures:

Alcoholic beverage suppliers and wholesalers are prohibited from providing dispensing equipment, furniture or fixtures to a retail licensee. This prohibition includes either directly providing the equipment or indirectly providing it through a third party. This prohibition extends beyond just the retailer's premises. A supplier or wholesaler may not provide dispensing equipment, furniture or fixtures for use at any location to any person holding interest in a retail license. Alcoholic beverage suppliers and wholesalers may provide draft dispensing and cooling equipment to a Special 24 Hour Licensee. A Special License is issued by the Commission only to non-profit organizations. A Special License is not to be confused with a temporary outdoor permit issued to a regular licensee.

? Rule 436.1045

College Promotions:

Alcoholic beverage suppliers and wholesalers are extremely limited in promoting alcoholic liquor on the campus of any college or university in the State of Michigan. Commission Rule 436.1861 prohibits an alcoholic beverage supplier or wholesaler from participating in or conducting any event, contest, activity, or undertaking on the campus of any 2 or 4 year college or university located in this state. This rule also prohibits an alcoholic beverage supplier or wholesaler from participating in or conducting any event, contest, activity, or undertaking off the campus of any 2 or 4 year college or university located in this state if the activity is organized or sponsored by any student group which has a majority of members who are under 21 years of age. Suppliers and wholesalers are also prohibited from hiring "campus reps" whose duty is to promote, market or encourage the use, sale, or consumption of alcoholic liquor on the campus or by the students of any 2 or 4 year college or university located in this state

? Rule 436.1861

Quantity Discounts:

Commission rules prohibit Wholesalers, Wine Maker or Small Wine Makers from offering quantity discounts to retail licensees for beer, wine or mixed spirit drinks. Wholesalers, Wine Makers and Small Wine Makers must sell beer, wine and mixed spirit drinks to all retailers in a market area at the same per case price which is posted with the Commission, except that split case fees may be charged for wine as long as the fee is non-discriminatory and not on a sliding scale.

? Rule 436.1625, Rule 436.1726

Non-Alcoholic Logoed Merchandise:

The Liquor Control Code or Administrative Rules does not prohibit the use of non-alcoholic brand logoed merchandise by retail licensees. Alcoholic beverage suppliers and wholesalers are however prohibited from providing any such material to retail licensees free of charge. An alcoholic beverage supplier or wholesaler may **sell** non-alcoholic beverage merchandise to retail licensees at no less than cost or fair market value.

? MCL 436.1609, Rule 436.1035

Retailer Advertising Brand & Price:

Retail licensees are allowed to advertise alcoholic beverage brands and prices off their licensed premises via flyers, banners, newspapers, radio, Internet, or through any other media. Suppliers and wholesalers are prohibited from paying for any retail advertisements and as noted earlier are prohibited from using the name of any retailer in their advertising. Suppliers and wholesalers may provide product 'ad slicks' to retailers who wish to include a particular brand in a newspaper ad or store flyer.

Samples:

Licensed alcoholic beverage suppliers and wholesalers may provide a sample of alcoholic liquor to retail

licensees and/or their employees. Non-employees of the retail licensee may not taste samples. The retailer may taste multiple samples but only one sample container may be left with the retail licensee. Sample containers must be marked "sample" in at least 2-inch letters, should be 1 liter or less, unless such size is unavailable then the next largest size available may be used but under no circumstances may a sample container be more than 3 liters. Retailers must remove sample containers from their premises within 24 hours.

? Rule 436.1001, Rule 436.1511, Rule 436.1863, Rule 436.1421, Rule 436.1513

Salespersons Purchasing Drinks for Customers:

A licensed Salesperson or Vendor Representative, may purchase a drink for customers of a brand represented by them as follows:

Beer - 1 drink for one customer.

Wine, Mixed Wine Drink or Spirits - 1 drink for each customer.

? Rule 436.1865

Drivers Prohibited from Drinking On Duty:

An on-premises retailer shall not knowingly sell, give or furnish alcoholic liquor to a person employed to deliver alcoholic while that person is on duty. Further a salesperson employed to deliver alcoholic liquor shall not purchase a drink for an employee while on duty.

? Rule 436.1021, Rule 436.1859, Rule 436.1865

Delivery to Consumers:

Licensed suppliers and wholesalers are prohibited from making deliveries to a customer of a retail licensee.

? Rule 436.1515, Rule 436.1035, MCL 436.1609

Sunday Deliveries:

Wholesalers are prohibited from selling or delivering beer to a retail licensee between 12:00 midnight on Saturday and 12:00 noon on Sunday, except to the holder of a Special License issued by the Commission.

? Rule 436.1635

Sales/Purchase Records:

All licensees, including retailers, suppliers, wholesalers and salespersons are required to keep all records pertaining to sales and purchases of alcoholic liquor for a minimum of 4 years.

? Rule 436.1007, Rule 436.1641, Rule 436.1727, Rule 436.1865

Product Returns To Retailers:

An off-premises licensee may accept from a customer, for a cash refund or exchange, an alcoholic liquor product purchased by the customer from the off-premises licensee if the product is demonstrably spoiled or contaminated or the container damaged to the extent that the contents would likely be of an unsanitary nature or unfit for consumption. Such returned product may not be resold and must be removed from the retailer's premises not more than 14 days after its return.

? Rule 436.1531

Product Returns To Wholesalers & Wine Makers:

A Wholesaler, Wine Maker or Small Wine Maker shall not make product exchanges, adjustments or refunds with retail licensees except for keg beer that shows evidence of leakage, keg beer that is flat and not salable at the time of tapping, or other reasonable grounds approved by the Commission. The Commission annually issues a blanket Order approving product refund or exchanges with retailers for a variety of additional reasons.

The Commission approves product exchanges or refunds between retailers and wholesalers or wine makers for the following reasons: outdated product; seasonal closing of retail licensee; retail licensee going out of business or placing license in escrow; driver/salesperson delivery error; order error by retail licensee; discontinuance of brand by supplier; license suspension or revocation; short fill; off taste, off color, sediment in product or adulterated product; breakers or leakers at the time of delivery; IRS or Michigan Department of Treasury seizure; and saleable product not used by a special licensee.

The Commission further ordered that wholesalers may **exchange** like products with retail licensees, on a one-for-one basis, for beer products nearing out-of-date code. Wholesalers may not refund or credit for beer products nearing out-of-date code, they may only exchange for like product on a one-for-one basis.

An inventory reset by a retail licensee is not an approved reason for product return or exchange.

Product exchange or refunds made to retail licensees as a result of the retailer discontinuing certain products will result in citations against both the retailer and wholesaler.

? Rule 436.1633, Rule 436.1735, 1/23/02 Commission Order

How To File A Complaint:

The Commission's Enforcement Division investigates allegations of violations of the Liquor Control Code. Complaints may be filed directly with the Commission's Enforcement Division by regular mail: MLCC, Enforcement Division, P.O. Box 30005, Lansing, Mi 48909; by fax at (517) 322-1040; by the Internet at: <http://www.reportunder21.com>, (click on "Liquor Control") or by calling the Commission's toll free hotline at (866) 893-2121.